



MINUTES

Criminal Code Reorganization Study Committee

September 8, 2008

MEMBERS PRESENT:

Senator Keith Kreiman, Co-chairperson
Senator Larry McKibben

Representative Kurt Swaim, Co-chairperson
Representative Clel Baudler
Representative Rick Olson

Public Members:

Mr. Dave Erickson
Ms. Jennifer Miller
Honorable Michael Mullins

Mr. Clarence Key, Jr. (Executive Director, Iowa Board of Parole) on behalf of Ms. Elizabeth Robinson
Ms. Jean Schlichtemeier

MEETING IN BRIEF

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Organizational staffing provided
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- I. **Procedural Business**
- II. **Prison Population Disparity**
- III. **Minority Impact Statements**
- IV. **Sentencing Commission Annual Conference**
- V. **Criminal Justice Information System (CJIS)**
- VI. **Subcommittee Updates**
- VII. **Materials Filed With the Legislative Services Agency**



Criminal Code Reorganization Study Committee

I. Procedural Business

Call to Order. Co-chairperson Kreiman called the fourth meeting of the Criminal Code Reorganization Study Committee to order at 10:12 a.m. on September 8, 2008, in the Supreme Court Chamber (Room 103) at the State Capitol.

Committee Business. Upon motion, the Committee approved the minutes from the June 3, 2008, meeting of the Committee.

Upcoming Meetings. The next meeting of the full Committee will be on Tuesday, December 9, 2008.

Adjournment. The meeting was adjourned at 12:30 p.m.

II. Prison Population Disparity

Representative Wayne Ford spoke to the Committee about the overrepresentation of the African-American community in Iowa's prison population. Representative Ford noted that in 1988, Iowa was first in the nation for incarceration rates of African-American juveniles. Representative Ford further stated that many factors have contributed to the current high incarceration rate for African-Americans in Iowa including numerous laws enacted over the previous 20 years. Representative Ford noted that gang participation and crack cocaine laws have disproportionately impacted the African-American community. Representative Ford stated that the minority impact legislation, 2008 Iowa Acts, Chapter 1095, (H.F. 2393) that requires an examination of the racial and ethnic impact of all new sentencing laws in Iowa is a good first step and will, at a minimum, provide information to legislators about the potential impact of proposed legislation on minority incarceration rates.

Committee Discussion. Committee discussion focused on whether the establishment of drug courts as an alternative to prison for offenders with substance abuse issues has impacted the minority prison population in Iowa. Representative Ford noted that minorities are not necessarily diverted to drug courts in the first instance and emphasized that the disparity in incarceration rates is due to the disparity in sentencing practices when comparing Caucasian and African-American offenders.

III. Minority Impact Statements

Ms. Beth Lenstra, Senior Fiscal Analyst, Legislative Services Agency (LSA), stated that LSA is in the process of developing protocols for the creation of minority impact statements to be used to assess the impact of legislation on minorities consistent with the directives contained in H.F. 2393. In developing such protocols, LSA staff met with the Criminal and Juvenile Justice Planning Division of the Department of Human Rights, the Department of Corrections, the Department of Public Safety, the Department of Transportation, and the Department of Justice as well as representatives from the Judicial Branch. They also worked closely with Isabel Gomez (Minnesota) and Jack O'Connell (Delaware) in developing a specific format for assessing the impact. Ms. Lenstra noted there is a lack of data at the local level for jail populations as well as lack of data concerning disabled offenders. Ms. Lenstra also noted that the legislation requires



state agency grant applicants to provide a minority impact statement and that the Office of Grants Enterprise Management within the Department of Management has developed a form for assessing such information.

Committee Discussion. Co-chairperson Keith Kreiman requested Ms. Lenstra provide updated drug court information to the Justice System Appropriations Subcommittee. Ms. Lenstra will work with Mr. Paul Stageberg, Administrator, Division of Criminal and Juvenile Justice Planning of the Department of Human Rights, in compiling the information.

IV. Sentencing Commission Annual Conference

Mr. Joe McEniry, Senior Legal Counsel, LSA, and Ms. Lenstra attended the National Association of State Sentencing Commission's (NASC) annual conference and presented a report to the subcommittee. Mr. McEniry stated that 23 states have established sentencing commissions and there are many variations in the way those sentencing commissions are organized and how they operate; several operate under specific guidelines; some states meet regularly and others do not; and many have abolished parole, but Pennsylvania kept their parole board. State sentencing commissions should be based upon the principles of fairness, equity, and sentencing certainty, be nonpartisan, have a well-defined mission, and have a strong research component with access to a sophisticated database of sentencing data and trends. Ms. Lenstra noted that although Iowa does not have a sentencing commission, many resources utilized by sentencing commissions are available to the criminal justice community in Iowa including the Justice Data Warehouse that serves as the state's statistical analysis center, the fiscal division of LSA that provides correctional and fiscal impact analyses on proposed legislation, and a variety of policymaking and advisory boards located within the executive and judicial branches.

Committee Discussion. Committee discussion focused on what effect, if any, sentencing proposals made by sentencing commissions would have on sentencing practices. Mr. McEniry responded that currently, in Iowa, no specialized body made up of the various stakeholders in the criminal justice system make recommendations to the legislature.

V. Criminal Justice Information System (CJIS)

The Honorable Michael Newmeister, Senior District Associate Judge for the 6th Judicial District, stated CJIS has identified 2,700 criminal offenses in the Code for the purpose of establishing a common charge code that all members of the criminal justice community can use when electronically transmitting information. During the process of identifying specific criminal offenses, CJIS compiled a list of proposals to improve the organization of the Criminal Code which he made available to Committee members. In Judge Newmeister's comments, he highlighted the following organizational issues that should be addressed by the Committee: simple misdemeanors and scheduled and nonscheduled violations should be specifically delineated and defined; magistrate jurisdiction in regard to certain violations should be clarified; multiple criminal offenses within one paragraph should be placed in separate paragraphs within the Code; certain enhancement provisions for repeat offenders should be clarified; and the criminal offense of fraudulent practice



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should be consolidated in the Criminal Code. Judge Newmeister also noted that it would be very helpful to work with the Code Editor after the legislative session.

Committee Discussion. Co-chairperson Kreiman commented it is important Judge Newmeister work closely with Professor Robert Rigg, chairperson of the Reorganization Subcommittee, as well as the Code Editor, in refining and drafting the specific CJIS proposals.

VI. Subcommittee Updates

A. Sentencing Subcommittee

The Honorable Michael Mullins, chairperson, reported that this subcommittee has met once. Judge Mullins stated the subcommittee has received information on how other states that have sentencing commissions handle sentencing issues but he stated that this subcommittee is not planning on establishing specific sentencing guidelines. Judge Mullins urged the Committee to consider the possibility of creating an advisory board or a sentencing commission as many of the issues under the purview of this Committee dovetail with the formation of a sentencing commission.

B. Specific Crimes Subcommittee

Representative Rick Olson, chairperson, stated the Specific Crimes Subcommittee has met once and heard from the various stakeholders in the criminal justice system. Representative Olson stated that the subcommittee will concentrate on revisions to Code Chapters 124 (controlled substances), 321 (motor vehicle law), and 321J (operating while intoxicated). Representative Olson noted that the work of the Reorganization Subcommittee will have a direct impact on the work of this subcommittee, so he is waiting to see the results of that subcommittee's work. Representative Olson also noted that changes proposed by the Iowa County Attorney's Association may be helpful to the Committee.

C. Reorganization Subcommittee

Co-chairperson Kreiman, on behalf of Chairperson Rigg who chairs the Reorganization Subcommittee, stated the subcommittee is studying the reorganization of the penalty provisions in Code Chapter 124 (Controlled Substances) and 321J (Operating While Intoxicated) as well as specific proposed Code changes recommended by CJIS. Co-chairperson Kreiman proposed the subcommittee complete a specific delineation of all possible sentencing options under both Code chapters for the full Committee to review prior to the 2009 legislative session. Representative Olson expressed some concern about restructuring both Code chapters without making substantive changes. Senator McKibben commented that the process may require a different course if problems arise when restructuring these Code chapters and Co-chairperson Swaim commented that restructuring both Code chapters is a work in progress and it is an open issue as to whether this task will be fully completed during the upcoming legislative session.



D. Foundational Provision Subcommittee

Co-chairperson Swaim presented information on the progress of this subcommittee on behalf of Chairperson Professor Jim Tomkovicz. This subcommittee has met twice since the last meeting of this Committee and plans on meeting monthly, during the legislative session if possible, until its work is complete. The subcommittee has agreed to propose that the Criminal Code include foundational language provisions relating to the act requirement, the culpability requirement, mistake, and criminal liability for the acts of others. All proposals are based upon the relevant Model Penal Code provisions on those same subject areas with some modifications.

The most significant work of this subcommittee relates to the culpability requirement which identifies and defines four different culpabilities (purpose, knowledge, recklessness, and negligence). Consistent with this proposal is the assumption that the crimes recognized in current law will be redefined in terms of these four culpabilities which will require coordination and discussion with members of all three other subcommittees particularly the Specific Crimes Subcommittee.

Chairperson Tomkovicz submitted memos to the subcommittee detailing the specific language proposals as well as a brief explanation of the proposals which were distributed to Committee members for further study and review at the next meeting of the full Committee.

VII. Materials Filed With The Legislative Services Agency

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the <Additional Information> link on the Committee's Internet Web page:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=211>

1. Proposals of Foundational Provision Subcommittee re: Actus Reus, Mens Rea, Mistake, Liability for Acts of Others.
2. Explanation of Foundational Provision Proposals by Professor Tomkovicz.
3. States Act to Reduce Racial Disparities in Prisons and Jails.
4. Iowa passes law requiring examination of racial impact of all new sentencing laws - National Law Journal.
5. Minority Impact Statements.
6. Summary of Annual Sentencing Commission Conference.